

## § 133.0

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Section 133.1 also issued under 15 U.S.C. 1096, 1124;

Sections 133.2 through 133.7, 133.11 through 133.13, and 133.15 also issued under 15 U.S.C. 1124;

Sections 133.21 through 133.25 also issued under 15 U.S.C. 1124, 19 U.S.C. 1526;

Sections 133.26 and 133.46 also issued under 19 U.S.C. 1623;

Sections 133.27 and 133.52 also issued under 19 U.S.C. 1526;

Section 133.53 also issued under 19 U.S.C. 1558(a).

SOURCE: T.D. 72–266, 37 FR 20678, Oct. 3, 1972, unless otherwise noted.

### § 133.0 Scope.

This part provides for the recordation of trademarks, trade names, and copyrights with the United States Customs Service for the purpose of prohibiting the importation of certain articles. It also sets forth the procedures for the disposition of articles bearing prohibited marks or names, and copyrighted or piratical articles, including release to the importer in appropriate circumstances.

### Subpart A—Recordation of Trademarks

#### § 133.1 Recordation of trademarks.

(a) *Eligible trademarks.* Trademarks registered by the U.S. Patent and Trademark Office under the Trademark Act of March 3, 1881, the Trademark Act of February 20, 1905, or the Trademark Act of 1946 (15 U.S.C. 1051 *et seq.*) except those registered on the supplemental register under the 1946 Act (15 U.S.C. 1096), may be recorded with the U.S. Customs Service if the registration is current.

(b) *Notice of recordation and other action.* Applicants and recordants will be notified of the approval or denial of an application filed in accordance with §§ 133.2, 133.5, 133.6, and 133.7 of this subpart.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

#### § 133.2 Application to record trademark.

An application to record one or more trademarks shall be in writing, addressed to the Intellectual Property Rights Branch, U.S. Customs Service,

1300 Pennsylvania Avenue, NW., Washington, DC 20229, and shall include the following information:

(a) The name, complete business address, and citizenship of the trademark owner or owners (if a partnership, the citizenship of each partner; if an association or corporation the State, country, or other political jurisdiction within which it was organized, incorporated, or created);

(b) The places of manufacture of goods bearing the recorded trademark;

(c) The name and principal business address of each foreign person or business entity authorized or licensed to use the trademark and a statement as to the use authorized; and

(d) The identity of any parent or subsidiary company or other foreign company under common ownership or control which uses the trademark abroad. For this purpose:

(1) *Common ownership* means individual or aggregate ownership of more than 50 percent of the business entity; and

(2) *Common control* means effective control in policy and operations and is not necessarily synonymous with common ownership.

(e) *Lever-rule protection.* For owners of U.S. trademarks who desire protection against gray market articles on the basis of physical and material differences (see *Lever Bros. Co. v. United States*, 981 F.2d 1330 (D.C. Cir. 1993)), a description of any physical and material difference between the specific articles authorized for importation or sale in the United States and those not so authorized. In each instance, owners who assert that physical and material differences exist must state the basis for such a claim with particularity, and must support such assertions by competent evidence and provide summaries of physical and material differences for publication. Customs determination of physical and material differences may include, but is not limited to, considerations of:

(1) The specific composition of both the authorized and gray market product(s) (including chemical composition);

(2) Formulation, product construction, structure, or composite product